

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of

Applications of WorldCom, Inc. and
MCI Communications Corporation for
Transfer of Control of
MCI Communications Corporation to
WorldCom, Inc.

CC Docket No. 97-211

To: The Commission

MOTION FOR ESTABLISHMENT OF PROCEDURAL SCHEDULE

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MOTION FOR ESTABLISHMENT OF PROCEDURAL SCHEDULE

GTE Service Corporation, its affiliated telecommunications companies,¹ and GTE Internetworking (collectively "GTE"), by their attorneys, hereby request that the Commission establish a procedural schedule for effective public review and comment on any new proposal for divestiture of Internet-related assets by MCI or WorldCom. The schedule should provide an opportunity for public input equivalent to that permitted in response to the applicants' initial – and now apparently superseded – spin off plan. Most importantly, neither the Commission or interested parties should be placed in the

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

position of awaiting the completion of review by antitrust regulators before commencing their own evaluation of the public interest ramifications of any proposed transaction.

On June 3, 1998, MCI filed an ex parte (the "ex parte") notifying the Commission of its proposed sale of certain Internet-related assets to Cable & Wireless (hereinafter occasionally referred to as "C&W"). The Commission issued a public notice on June 4, 1998 inviting interested parties to comment on whether the transaction described in the ex parte "resolves any issues concerning the impact of the proposed WorldCom and MCI merger on the Internet." GTE, along with other parties, submitted comments on June 11, 1998. On June 15, 1998, WorldCom and MCI jointly filed a motion asking the Commission to extend the deadline for reply comments for a period not to exceed twenty-nine days. The Commission granted that motion the next day without a realistic opportunity for public comment.²

In its order, the Commission instructed WorldCom and MCI to "file a reply by July 15, 1998, or within two days from any final action taken with respect to the merger by the Department of Justice and/or the European Commission, whichever comes first."³ Following this submission "there will be an opportunity for interested parties to respond to these comments as well as to comments that were filed with the Commission on June 11, 1998."⁴ GTE submits that, particularly in view of recent developments, such

² *Order Granting Extension of Time*, CC Docket No. 97-211 (June 16, 1998).

³ *Id.* at 1.

⁴ *Id.* at 2.

procedures are inadequate to protect the public interest in the context of the proposed merger.

The press is now reporting that WorldCom and MCI are in the process of submitting a new divestiture proposal to the European Commission ("EC"), which may make a recommendation on the proposal as early as Friday, June 19th.⁵ To the extent WorldCom's and MCI's plans have stabilized sufficiently to make possible such a submission, the Commission and interested parties should be informed and permitted to participate in the review process. Accordingly, WorldCom and MCI should be required to promptly file with the Commission a full description of the new EC proposal, together with all relevant documentation, and their filing should then be put out for public comment.

Although GTE agrees that it would be a waste of Commission resources to review reply comments based on a divestiture proposal that no longer reflects the intent of the parties, that does not appear to be the case with the applicants' latest EC proposal. Even more importantly, the Commission should not defer its review of any proposed spin off or the merger generally solely to await the outcome of the wholly separate antitrust review being undertaken by the Department of Justice ("DOJ") and the EC. Rather, because its public interest responsibilities are far broader than simply ascertaining the competitive implications of the proposed transaction, the Commission should ensure that the details of any new proposal are submitted for public review and

⁵ Mike Mills, "MCI, WorldCom Think EU Will Allow Merger," Wash. Post at C14, June 17, 1998.

comment in a timely fashion and in accord with the procedures it has previously established.⁶ This is necessary to permit an informed evaluation of the proposal's public interest ramifications consistent with the Communications Act.

Notably, the commenters on MCI's original divestiture plan, without exception, echoed GTE's showing that the proposed merger would enable the combined WorldCom/MCI to dominate the Internet.⁷ These commenters, again without exception, also supported GTE's demonstration both that the proposed Cable & Wireless

⁶ See *Public Notice, Commission Seeks Comments on MCI Ex Parte Describing Internet Aspects of Proposed WorldCom and MCI Merger*, CC Docket No. 97-211 (June 4, 1998).

⁷ See Comments of AT&T Corp. on MCI's June 3, 1998 Ex Parte at 1, CC Docket No. 97-211 (June 11, 1998) (the WorldCom/MCI merger creates "competitive concerns") ("AT&T Comments"); Bell Atlantic Comments on the MCI Ex Parte Describing Internet Aspects of Proposed WorldCom and MCI Merger at 2, CC Docket No. 97-211 (June 11, 1998) (referring to "Internet problems") ("Bell Atlantic Comments"); BellSouth Corporation's Comments on MCI's Proposed Partial Internet Divestiture at 1, CC Docket No. 97-211 (June 11, 1998) (referring to "threat to Internet competition," and the merger's "anticompetitive effects") ("BellSouth Comments"); Comments of the Communications Workers of America on MCI Ex Parte Describing Internet Aspects of Proposed WorldCom and MCI Merger at 1, CC Docket No. 97-211 (June 11, 1998) (noting the "anti-competitive effects of the MCI/WorldCom merger on the Internet market") ("CWA Comments"); Comments of Internet Service Providers' Consortium at 2, CC Docket No. 97-211 (June 11, 1998) ("WorldCom's addition of InternetMCI to its portfolio, which already included UUNet, Gridnet, and ANS, would place up to 50 percent of the backbone under the control of one corporate entity") ("ISPC Comments"); Comments of Simply Internet, Inc. in Response to Proposed MCI Divestiture at 1-2, CC Docket No. 97-211 (June 11, 1998) ("the merger of MCI and WorldCom's Internet backbone facilities would create a dominant player") ("Simply Internet Comments"); Comments of Sprint Corporation at 2, CC Docket No. 97-211 (June 11, 1998) (noting the "severe threat to Internet competition created by the merger") ("Sprint Comments"); Comments of Telstra Regarding MCI's Proposed Divestiture of Internet Assets to Cable & Wireless (C&W) at 4, CC Docket No. 97-211 (June 11, 1998) ("The proposed merger of MCI and WorldCom would combine two of the three largest U.S. IPL carriers and two of the largest Internet backbone networks") ("Telstra Comments").

transaction falls far short of the full divestiture touted by MCI and that it would not alleviate the severe anti-competitive consequences stemming from the merger.⁸

Indeed, GTE explained that an effective remedy involving the divestiture of internetMCI, one that would eliminate the serious competitive risks created by the merger, would be exceedingly difficult to achieve because of (1) the tightly integrated nature of MCI's telecommunications and Internet facilities and operations, (2) MCI's practice of bundling telecommunications and Internet services in its customer offerings, and (3) the difficulty of crafting safeguards that could prevent backsliding of customers as a result of their continuing contacts with MCI's integrated sales force.⁹

Thus, it is not surprising that the European Commission reportedly has already rejected MCI's proposed spin off as a solution to the competitive problems associated with the merger. Karel Van Miert, Member of the European Commission responsible for competition policy, has stated that "[w]e felt [the proposed spin off] did not completely

⁸ See AT&T Comments at 1; Bell Atlantic Comments at 2; BellSouth Comments at 1; CWA Comments at 2; ISPC Comments at 3; Simply Internet Comments at 2; Sprint Comments at 2; Telstra Comments at 10.

⁹ GTE Comments at 30-32. MCI's practice of "main streaming," or integrating Internet business with other businesses, means that the same customers, personnel, and facilities are involved with the provision of Internet and non-Internet businesses alike. *Id.* at 30-31. Therefore, divesting the company of "Internet" assets is a daunting task, because MCI has very few Internet-only assets. *Id.* Furthermore, internetMCI often bundles its Internet services with other services to create a more attractive product for potential customers. These customers value the bundled nature of the services they receive from the company, and are therefore likely to try to rebundle Internet services with the services they will continue to receive from WorldCom/MCI. *Id.* at 31. Because WorldCom/MCI will be able to maintain an ongoing relationship with these customers under the current plan, backsliding is inevitable. *Id.* CWA likewise recognized the problems inherent in any attempt to engineer a complete divestiture of internetMCI. CWA Comments at 11.

meet the requirements. I hope the companies will reflect on that and make a better offer."¹⁰ This opposition may have already led MCI to decide that the "Cable and Wireless \$625 million acquisition of MCI's backbone business is off,"¹¹ and to begin the process of seeking other buyers for additional Internet-related assets. The fact that Cable & Wireless recently sought an injunction against MCI soliciting new offers,¹² but that MCI "won court approval to seek buyers for its Internet businesses"¹³ in order to satisfy concerns about the spin off, appears to confirm that this is the case.

It follows that the Commission should carefully evaluate the effects of any new divestiture proposal consistent with its statutory mandate to ensure that this merger serves the public interest.¹⁴ In particular, the Commission cannot be relegated to the

¹⁰ "MCI May Expand Internet Sale To Answer European Antitrust Concerns," Communications Daily, June 8, 1998. See also, "WorldCom and MCI under fire," Financial Times (London), June 6, 1998, p. 3 ("Karel van Miert [sic], EU competition commissioner, said he and the US Justice Department had urged the companies to offer 'something better' than last week's \$625m sale of MCI's internet backbone business to Cable and Wireless.").

¹¹ "Breaking News," ISP Business News, June 8, 1998.

¹² See Mike Mills, "MCI May Be Selling More Assets; Cable & Wireless Sues," June 12, 1998, Wash. Post, p. F3 (the suit "all but confirms there are additional pieces of MCI's Internet business being considered to satisfy [the Justice Department's] antitrust concerns." (quoting Daniel Zito, analyst for Legg Mason Wood Walker Inc.)). See also "MCI To Sell More Assets?," InternetWeek, June 15, 1998, p. 7 ("MCI could be willing to ante up more assets than just its Internet backbone to make the \$37 billion WorldCom merger happen, the company said late last week.").

¹³ See "Digest," Wash. Post, June 13, 1998, Financial Section at D1.

¹⁴ See 47 U.S.C. §§ 214(a), 310(d). See also *In the Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, 12 FCC Rcd. 19985, 19987 (1997).

role of rubber stamping the applications based on an agreement reached between WorldCom, MCI, DOJ, and the EC. The Commission has an independent and critically important responsibility to protect the public interest under the Communications Act. While DOJ and the EC are examining the competitive impact of the merger, the FCC has a different and broader mandate in which competitive effect is just one component of the public interest review.¹⁵ Therefore, the Commission should require submission of all details and documentation concerning any new divestiture proposal as soon as that information is made available to any antitrust authority, allow interested parties to comment on those submissions, and carefully review that record in light of the Act's public interest standard.¹⁶

As demonstrated by GTE and every other commenting party, the transfer of a limited number of internetMCI assets to Cable & Wireless falls far short of meeting this standard because the spin-off would not sufficiently decrease the merged entity's ability and incentive to degrade or deny interconnection to its rivals and offers no independent

¹⁵ *United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980).

¹⁶ Of course, the Commission must also address the many public interest concerns involving the domestic and international long distance markets and local exchange markets identified by GTE and others, as well as the Applicants' continuing refusal even to attempt to make the showing required for approval of their merger as established in *Bell Atlantic/NYNEX*. These issues alone warrant dismissal of the applications or, in the alternative, denial of the applications on the merits. See Renewed Motion to Dismiss of GTE, CC Docket No. 97-211 (June 11, 1998); Comments of GTE Service Corporation, Its Affiliated Telecommunications Companies, and GTE Internetworking, on WorldCom/MCI's Joint Motion to Petitions To Deny and Comments, CC Docket No. 97-211 (Mar. 13, 1998); Reply of GTE Service Corporation to Opposition to Motion To Dismiss, CC Docket No. 97-211 (Feb. 5, 1998); Petition to Deny of GTE Service Corporation and Its Affiliated Telecommunications Companies, CC Docket No. 97-211 (Jan. 5, 1998).

public interest benefits. Therefore, unless WorldCom and MCI are required to implement a more complete divestiture, the Commission should deny the applications on this ground alone. If the applicants do present the Commission with an alternative divestiture proposal, the Commission must ensure that the merged company has neither the incentive nor the ability to degrade interconnection with its competitors in the backbone market. In order for this to be the case, any alternative proposal must embody two overarching principles:

- A successful remedy must allow the acquiring entity to inherit either WorldCom's or MCI's competitive position on the Internet, thereby preserving the current market structure and assuring that market power is not created by virtue of the merger; and
- Only a structural remedy mandating the permanent divestiture of complete Internet businesses can hope to be effective in preserving the competitive network-of-networks structure of the Internet.

To address the competitive impact element of the public interest test, any new divestiture proposal such as that now reportedly being submitted to the EC must include more than just the piece-parts of a backbone business to remedy the anticompetitive threat posed by the merger. Backbone networks are far more than just routers and circuits. Each network has a unique combination of assets that, in sum, dictate that network's relative status and success in the marketplace. As described below, the whole backbone network – including the infrastructure, customers, contracts, sales and engineering personnel, and support services – must be divested:

- Infrastructure is one component of a backbone network. This includes the circuits that carry the network's data and the collocation space needed to interface circuits and network elements. Any divested entity must take these physical assets and be granted access to collocation space, and must also be given rights to expand its use of these facilities as short-term growth demands.

- A backbone's entire customer base and set of contractual relationships are essential parts of the integrated whole. Any divested backbone must therefore take direct customer relationships -- with dial-up, dedicated access, ISP, and Web hosting customers -- as well as any contractual relationships with customers and suppliers.
- Backbone networks also include a significant amount of equipment, from routers, to operations support systems, to network operations centers. This equipment is a key part of any backbone that must be included in a divestiture.
- Networks that provide wholesale dial-up service carry an additional layer of infrastructure ranging from the modems that connect customers to the dial-up network, to the circuits, POPs, and servers necessary to provision the customers, to the frame relay service needed to deliver dial-up traffic to the retailer's network. This infrastructure also must be included.
- Apart from these physical assets, divestiture of any backbone network must also include the personnel dedicated to managing the network's various aspects, including operations and engineering.
- Further, a backbone's sales and marketing force must also be included in any divestiture. These personnel have unique skills and experiences that are integral to the backbone's customer relationships and to its continuing viability and maintenance of market share.

For all of the foregoing reasons, the Commission should require the prompt submission of any new divestiture plan at the same time it is provided to antitrust authorities, seek public comment on the competitive and other implications of any such proposal, and independently evaluate the proposal under its public interest mandate. Most importantly, given the overwhelming record evidence that the proposed Cable & Wireless transaction would not ameliorate the merger's detrimental effects on the Internet, the Commission should reject WorldCom's and MCI's attempts to address the Internet-related concerns raised by their applications unless the applicants develop an alternative solution that ensures that the merger will be pro-competitive and serve the

public interest. The Commission must not accept any alternative proposal, even if it is approved by DOJ and the EC, unless it completely and permanently removes WorldCom/MCI's incentive and ability to undermine competition in the Internet backbone market as a result of the merger.

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June 17, 1998

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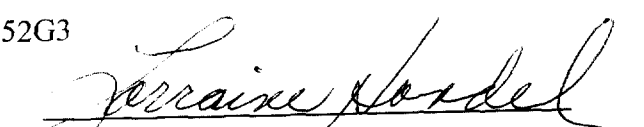
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